

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Special Permit for a Golf Facility

Proposed New Rule: N.J.A.C. 13:2-5.3

Proposed Recodifications: N.J.A.C. 13:2-5.3 and 13:2-5.4 as 13:2-5.4 and 13:5.5

Authorized By: /signed/

Jerry Fischer, Director

Division of Alcoholic Beverage Control

Authority: N.J.S.A. 33:1-3; 33: 1-39; and 33:1-74

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2002 -

Submit written comments by *(60 day comment period)* to:

Jerry Fischer, Director

Division of Alcoholic Beverage Control

140 East Front Street

P.O. Box 087

Trenton, New Jersey 08625-0087

The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (Division) is proposing a new rule which would provide for the issuance of a special permit for a golf facility. This permit would authorize permitted golf facilities to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. However, the holder of a special permit for a golf facility may serve alcoholic beverages during a social gathering only if such social gathering is directly related to playing golf on the golf course the same day. This permit specifically does not authorize the service of alcoholic beverages at non-golf related social gatherings, such as holiday parties, weddings, birthday parties, or family religious events. The Division is also proposing a recodification, without any change in text, of two rules dealing with other special permits.

The proposed new rule, N.J.A.C. 13:2-5.3, sets out a description of the special permit for a golf facility and the application process therefor. Application for this permit may be made to the Director upon the submission of the requisite fee of \$1000.00 and documentation including: a letter detailing the manner of proposed operation under the permit; a plan or sketch of the premises to be used in accordance with the permit; copies of the applicant's certificate of incorporation or charter, if applicable; evidence of the filing of a copy of the application with the

municipal issuing authority where the facility is located; an affidavit of publication by a newspaper of a notice of application and any other information or documents required by the Director. The proposed new rule provides that upon the timely filing of a signed written objection to the issuance of a special permit for a golf facility, the Director will afford a hearing to all parties and notify them of the date, hour and place thereof. The Director may, in his sole discretion, issue a temporary special permit pending the hearing.

Existing rule N.J.A.C. 13:2-5.3 is recodified as 13:2-5.4 with no change in text. It provides a description of certain special permits for the sale or purchase of alcoholic beverages and the procedure for application therefor.

Existing rule N.J.A.C. 13:2-5.4 is recodified as 13:2-5.5 with no change in text. It provides a description and application process for certain temporary miscellaneous contingency permits which may be issued by the Director.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The Alcoholic Beverage Control Act allows the Director to issue permits in the event of contingencies where it would be appropriate and consonant with the spirit of the alcoholic beverage laws to authorize the consumption of alcoholic

beverages, yet such a contingency has not been specifically provided for in the statute and special cause has been shown. (N.J.S.A. 33:1-74.) The Division has recognized that such a contingency has arisen with regard to certain golf facilities.

Golf facilities that are operated for private gain rather than as not-for-profit clubs are not eligible for a club license. Furthermore, due to the restrictions on the number of plenary retail alcoholic beverage licenses that may be issued in the State of New Jersey in a municipality based upon its population (N.J.S.A. 33:1-12.14), such facilities are often unable to obtain a plenary retail license. Likewise, these facilities do not qualify for Concessionaire Permits because they are not operating on public land.

The Alcoholic Beverage Control Act has recognized the contribution of golf facilities in the community. In fact, in the event that a municipality has failed or neglected to adopt an enabling ordinance to provide for certain club licenses, the Act specifically provides for special permits to golf and country clubs. (N.J.S.A. 33:1-46.2.) Although this statutory section does not apply to the specific situation addressed by the proposed new rule, it is evidence of the Legislature's recognition that members and guests of such facilities ought to have the ability to consume an alcoholic beverage there, if they so choose. Indeed, similarly situated golf facilities on public land or operated as not-for-profit clubs by members have alcoholic beverage licenses or permits available to them. Moreover, golf facilities

serve a special social function in the community as well as preserve valuable open space.

The permit proposed currently by the Division, therefore, is clearly appropriate and consonant with the State's alcoholic beverage laws and thus, there is a positive social benefit to the public at large.

However, to ensure that this permit is used only for golf-related circumstances, and not as a substitute for a plenary retail license, the holder of a special permit for a golf facility may serve alcoholic beverages during a social gathering only if such social gathering is directly related to playing golf on the golf course the same day. This permit does not authorize the service of alcoholic beverages to the general public or at non-golf related social gatherings, such as holiday parties, weddings, birthday parties, or family religious events.

The recodification of N.J.A.C. 13:2-5.3 and 13:2-5.4 as 13:2-5.4 and 13:5.5 is proposed so that the new rule, N.J.A.C. 13:2-5.3, will be codified appropriately.

Consequently, this proposed new rule and the recodification of N.J.A.C. 13:2-5.3 and 13:2-5.4 as 13:2-5.4 and 13:5.5 enables the Division to enforce the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, *et seq.*, to strictly regulate the sale of alcoholic beverages to protect the health, safety and welfare of the people of this State. Therefore, a positive social impact is realized by the adoption of this new rule and the recodification.

Economic Impact

A permitted golf facility under the proposed new rule would be authorized to serve alcoholic beverages only to members, guests of members and guests of the facility, or during a social gathering only if such social gathering is directly related to playing golf on the golf course the same day. It is anticipated that this would have a beneficial economic impact on such permitted facilities. The proposed new special permit for golf facilities is intended to assist uniquely situated golf facilities which otherwise would be unable to obtain the ability to serve alcoholic beverages to its members and guests, despite the Legislature's evidenced favorable view of golf facilities.

The Division does not anticipate a negative economic impact upon the alcoholic beverage industry's holders of plenary retail consumption licenses, since the special permit for golf facilities is limited and does not authorize such a permittee to serve alcohol to the general public or sell package goods, unlike plenary retail consumption licensees. The proposed new rule will not have any significant economic impact on the Division, other than the provision of fees for the permits issued.

Federal Standards Statement

A Federal standards analysis is not required since the proposed new rule and recodification is dictated and in accordance with N.J.S.A. 33:1-1, *et seq.* There are no federal requirements or standards applicable to this rulemaking.

Jobs Impact

The Division is not directly aware of any jobs that are likely to be generated or lost as a consequence of the proposed new rule and recodification.

Agriculture Industry Impact

The proposed new rule and recodification will have no impact on the agricultural industry in this State.

Regulatory Flexibility Analysis

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, *et seq.*, a “small business” means any business resident in this State that employs fewer than 100 full-time employees; is independently owned and operated; and is not dominant in its field. A few New Jersey for profit golf courses could be considered "small businesses" within the meaning of the Regulatory Flexibility Act. The proposed new rule and recodification do not require professional services for

compliance. The proposal imposes some recordkeeping and reporting obligations, such as the ability to supply lists of bona fide members to ensure compliance. However, the Division does not believe that the new rule and recodification will impose any undue burden on small businesses, in that they are not treated any differently than any other for profit golf courses in the State.

Smart Growth Impact

The Division does not believe that the proposed new rule and recodification will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 5: Issuance of Special Permits by Director

13:2-5.3 Special permit for a golf facility

(a) Application for a special permit may be made to the Director by any individual, partnership, corporation, or other type of legal entity which owns and operates a golf facility whereby said golf facility is authorized to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. For the purposes of this subsection:

- 1. A golf facility is defined as a golf course consisting of a minimum of 18 holes spaced over at least 5,000 linear yards;**
- 2. A member is defined as a person who, by virtue of the payment of not less than \$500.00 or other reasonable consideration, receives the right to use the golf facility for a period of not less than one year, after filing a membership application and waiting at least three days subsequent to the filing thereof;**
- 3. A guest of a member is defined as an individual who is expressly invited to the golf facility by an individual member and who is personally attended by the individual member at the golf facility; and**
- 4. A guest of the facility is defined as an individual specifically invited to the golf facility by the owner or management of the facility without charge.**

(b) The term of a special permit for a golf facility shall be from July 1 through June 30 unless otherwise specified. The fee for the permit shall be \$1000.00, payable with the application to the Division of Alcoholic Beverage Control.

(c) All applicants for a special permit for a golf facility must be qualified to hold an alcoholic beverage license as provided in the Alcoholic Beverage

Control Act. The application must be supported by the following documents before the special permit may be issued by the Director:

- 1. Letter of applicant detailing manner and method of proposed operation under permit;**
- 2. Plan or sketch of premises to be used in accordance with permit;**
- 3. If applicant is incorporated--copy of certificate of incorporation; if an association--copy of charter;**
- 4. Evidence that a copy of the application has been filed with the municipal issuing authority of the municipality in which the facility is located;**
- 5. Affidavit of publication by newspaper in which notices of application has appeared, as hereinafter provided; and**
- 6. Any other information or documents requested by the Director.**

(d) Within 10 days subsequent to the filing of the application with the Director, the applicant shall cause to be published a notice of application once a week, for two weeks successively, at least 7 days apart, in a newspaper printed in the English language, published and circulated in the municipality in which the premises sought to be authorized are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper

printed in the English language, published and circulated in the county in which said premises are located.

(e) Notice of application shall be published in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT

(Name of Applicant)

**has applied to the DIRECTOR of the New Jersey DIVISION OF
ALCOHOLIC BEVERAGE CONTROL for a SPECIAL PERMIT FOR A
GOLF FACILITY for premises situated at**

(No.) (Street) (Municipality)

The person(s) who will hold an interest in this permit is/are:

See *

See ** to insert other information applicable

Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625.

(Name of Applicant)

(Address of Applicant)

*** If the applicant is an individual, insert the name and residence address of that individual.**

If the applicant is a corporation, insert the names and residence address of all officers and all directors, and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the name of the partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If the applicant is a limited liability company, insert the name of the limited

liability company, and the names and addresses of all officers and members.

****If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Director of the Division of Alcoholic Beverage Control, 140 East Front Street, Fifth Floor, Trenton, New Jersey 08625."**

(f) Upon timely receipt of a duly signed written objection to the issuance of a special permit for a golf facility, the Director will afford a hearing to all parties and notify the applicant and the objector of the date, hour and place thereof. The Director may, in his sole discretion, issue a temporary special permit pending the hearing. No hearing need be held if no objection shall be lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) The holder of a special permit for a golf facility shall be entitled to purchase alcoholic beverages only from the holders of New Jersey wholesale licenses. Said permittee is expressly prohibited from purchasing alcoholic beverages from retail licensees and from selling or offering for sale alcoholic beverages for off-premises consumption.

(h) The holder of a special permit for a golf facility may serve alcoholic beverages to members of the golf facility, guests of members and guests of the golf facility, and those attending a social gathering, if such social gathering is directly related to playing golf on the golf course the same day. This permit specifically does not authorize the sale or service of alcoholic beverages at non-golf related social gatherings, such as holiday parties, weddings, birthday parties, or family religious events.

(i) No alcoholic beverages can be consumed on the permittee's premises other than that sold by the permittee.

(j) The Director may impose special conditions on any permit.

(k) The holder of a special permit for a golf facility must abide by all provisions of the New Jersey Alcoholic Beverage Control Act, Division rules and regulations and municipal ordinances as they pertain to retail licensees. Failure to do so may result in disciplinary proceedings against the permittee. Hours of sale shall not exceed those permitted in the municipality in which the golf facility is located.

Recodify existing N.J.A.C. 13:2-5.3 and 13:2-5.4 as 13:2-5.4 and 13:2-5.5.

(No change in text.)